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MATRIC NUMBER: 18/LAW01/188

COURSE CODE: LPI 204

DATE: 9/4/2020

QUESTIONS

1. State clearly, the procedure from arraignment to imposition of sentence in the High Court. Comment on the remedy available to the accused after the imposition of the sentence.
2. Comment on the various methods by which civil proceedings may be commenced in the High Court.
3. The process for hearing criminal offences in the High Court in Nigeria, begins at the arraignment stage, until finally concluding with sentencing. The procedure is as follows:
   * + 1. Arraignment: This is when the accused is called formally before the court, by name. This officially commences the criminal proceedings, the indictments and information brought against him are read to him, and he is asked whether he pleads guilty or not guilty. This means that the registrar or another officer of the court, calls the accused by name, while the accused is standing in the dock, and reading over and explaining the charge to the accused in a satisfactory manner. The accused is then to make his plea instantly. The may plead the following:

Autrefois convict: This means that the accused, has been convicted of this offence before, and cannot be tried again. This is a plea against double jeopardy, which means a person cannot be tried twice for the same offence. It is fundamental to the Human Rights of Nigeria.

Autrefois acquit: This means the accused has been tried before for the same offence, and has been acquitted. Therefore he cannot be tried again, to prevent double jeopardy.

He may stand mute: When an accused stands mute without saying a word, a plea of not guilty is entered for the accused. This is provided by the law.

Plead guilty to a lesser offence: The accused may also plead guilty to a lesser offense which is not on the information. If it is accepted by the prosecution, then the court may pass its sentence accordingly. This allows the court to sentence the accused for a lesser offence, creating the room for a plea bargain.

Plead Guilty: The accused may also plead guilty, then the counsel will give the court a summary of the evidence, and a detailed account of the accused’s background, his character and criminal record if any, The defence counsel then makes his allocutus or plea for mitigation of sentence, then the court passes its sentence.

Plead not guilty: When the accused pleads not guilty, then the trial starts.

* + - 1. Prosecution: The counsel for the prosecution opens a criminal proceeding by calling evidence for the prosecution. The witnesses are called and are examined in chief, and any exhibits they have are tendered. The witnesses are then cross-examined by the defence counsel, and are then re-examined by the prosecuting counsel as may be necessary, and the prosecution’s case closes. In criminal cases the burden of proof is on the prosecuting counsel, and the proof must be beyond reasonable doubt, when the burden of proof is not discharged, the charge is dismissed, and the accused is legally entitled to be discharged and acquitted. The proof of guilt is never lowered or watered down, this is because it is better for a guilty person to go scot-free, than an innocent man be unjustly imprisoned. This originated from a Roman maxim, and this is seen in the case of Ukorah v State when Chukwunweike Idigbe JSC said “The Romans had a maxim that said that it is better for ten guilty persons to go unpunished than for one innocent person suffer”
      2. Submission of “no case answer”: After the prosecuting counsel has made his case, the defence counsel can make a submission that the prosecuting counsel has not produced sufficient evidence, or has made a prima facie case against the accused, therefore the accused has no case to answer and the court should not proceed further. The defence counsel makes his submission by addressing the court, the prosecuting counsel replies, and the judge makes a ruling. The judge may accept the submission, and if he accepts it, a not guilty verdict is passed, the accused can be discharged and acquitted, or discharged but not acquitted if the submission succeeds on a technicality and not merit. If the judge rejects it, the trial proceeds and the accused has to state his case by giving evidence in his defence. If the accused refuses to give evidence, and stands by his no case submission, the court would often convict the accused. The reason for this is that the accused failed to defend himself against a prima facie case made against him.
      3. Defence: At the close of the failure of the no submissions case for the prosecution, if any was made, the case for the defence opens up. The accused and his witnesses (if any) are led in evidence-in-chief by the defence counsel, they are cross examined by the prosecuting counsel, and are re-examined by the defence counsel. Each witness undergoes this process, and it is never mixed up. Each witness must undergo the whole process before another witness is called, this rule can be waivered for good reasons i.e. when a witness is ill, when a witness is very busy, when a witness lives in a distant place or travelling etc. After the witnesses have testified and tendered evidence any evidence they have, then the case for the defence ends.
      4. Closing addresses: After the case for the defence, both counsels make closing speeches by addressing the court from their filed written addresses. The prosecution addresses the court first always, he points out the strength of his case, and the weaknesses of the other, and urges the court the convict the accused as guilty as charged. The general rule is that the case of the prosecution must succeed on its own, this is because it must be proved beyond reasonable doubt, but not beyond the shadow of a doubt. The prosecution’s case must succeed o its own strength, and not rely on the weakness of the defense’s case. This is why an accused is not bound to put up a defence and may in appropriate circumstances rest his case or defence on the case of the prosecution. The defence then addresses the court, he points out the weaknesses of the Prosecution’s case. If a prima facie case has been mad out, or the or sufficient evidence has not been provided as required by the law to discharge the burden of proof that rests on the prosecution, he points all of these out, and urges the court to discharge and acquit the accused on the charges leveled against him. The rule of closing speeches is that, the accused or his counsel, have the right to the last word, that is to round of the address.
      5. Judgment: After the addresses by both sides, the judge fixes a date for the judgment, if it is not a summary trial. The court then rises in adjournment in order to allow it deliberate on the facts, consider and evaluate the totality of the evidence in the case. On the adjourned day, the court gathers to deliver its judgment. However if the trial is a summary trial, then the court delivers a judgement there and then, or the court adjourns for a while, and then convenes again on the same day to deliver its judgement. In the judgement the judge weighs and reviews the evidence from both sides. He states his reasons for believing the evidence one side, and his reasons for not believing the evidence of the other. The judge will then either find the accused guilty or not guilty as the case may be, according to the law.
      6. Discharge: If the accused is found not guilty on merit, then the judge will dismiss the charges made against him, and discharge and acquit the accused as provided by the criminal procedure law. However if the person if the prosecution failed on a technicality, then the court will discharge but not acquit the accused. When the accused has been found not guilty, the court makes one of the following orders:
* Dismissal order: dismissing the information of charges
* Order of discharge of the accused on the charges
* Order of acquittal
* Order of compensation for the accused
  + - 1. Sentence: When the accused has been found guilty, before he is sentences, an allocutus or plea for mercy is made by the defence counsel. After the Allocutus, the sentence is passed. Some sentences the court may pass include:
* Imprisonment, usually with hard labour
* Fine
* Death sentence
* Caning
* Deportation
  1. When an accused has been sentenced, the only remedy he has is an appeal, this is made to the Court of Appeal, which is the only court with exclusive jurisdiction to receive appeals from the courts below it. The right to appeal in some cases is recognized by the constitution as a right. An appeal against the final judgement of the High court must be lodged within three months for civil cases, and ninety (90) days for criminal cases. An appeal against an interlocutory decision of the High court must be made within fourteen (14).

1. The modes of commencing a civil action in the High Court include:
2. Writ of summons: This is one of the modes of commencing a civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he wishes to defend himself against the plaintiff’s claim. A writ is normally accompanied by an endorsement of the claim or a statement of claims that the defendant is made aware of the claim made against him.
3. Originating summons: It is one of the ways of commencing a civil action, an action is commenced under it when it is required by statute or a dispute which is concerned with matters of law, and it is unlikely to be any dispute of fact. An Originating summons may be Inter parties or Ex-parte of the rules of court. It is heard by registrars or judges in chambers or in open court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the originating summons. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.
4. Originating motion: This is used to commence a proceeding in court, they are only provided for by a statute or rule of court. Examples of actions commenced in this manner are:

* Application for habeas corpus
* Order of mandamus
* Prohibition or certiorari
* Application for judicial review
* Action for the enforcement of fundamental human rights under the Fundamental Rights Enforcement Procedure rules 2009

1. Petition: This is a legal document formally requesting a court order. Petitions along with complaints are considered pleadings at the onset of a suit. Are considered pleadings at the onset of a suit.

SOURCES

* The Nigerian Legal System by Ese Malemi pg. 451-458
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* <https://www.resolutionlawng.com/how-to-commence-civil-action-in-nigeria/>